**Before the**
**NATIONAL TELECOMMUNICATIONS and**
**INFORMATION ADMINISTRATION**
**Washington, D.C.**

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| In the Matter of the | ) | |
| | ) | |
| American Recovery and Reinvestment Act of 2009 | ) | Docket No. 090309298-9299-01 |
| Broadband Initiative Programs | ) | |

## I. Introduction

Pursuant to the American Recovery and Reinvestment Act of 2009 (the Recovery Act), Congress directs the National Telecommunications and Information Administration (NTIA) working through the Broadband Technology Opportunities Program (BTOP), and the Rural Utilities Service (RUS) to implement broadband initiative programs designed to make broadband service available to consumers residing in rural, unserved or underserved areas of the United States. In order to most effectively address the purposes of the broadband programs contained in the Recovery Act[1] and to coordinate and facilitate the development of these programs in a timely manner, NTIA and RUS released a Joint Request for Information and Notice of Public Meeting[2] seeking public comment on a number of questions pertaining to the implementation and application of the broadband initiative programs. The Nebraska Rural Independent Companies

[1] Section 6001(b) states that the purposes of the BTOP are to (1) Provide access to broadband service to consumers residing in unserved areas of the United States; (2) provide improved access to broadband service to consumers residing in underserved areas of the United States; (3) provide broadband education, awareness, training, access, equipment, and support to (A) Schools, libraries, medical and healthcare providers, community colleges, and other institutions of higher education, and other community support organizations and entities to facilitate greater use of broadband service by or through these organizations; (B) organizations and agencies that provide outreach, access, equipment, and support services to facilitate greater use of broadband service by low income, unemployed, aged, and otherwise vulnerable populations; and (C) job-creating strategic facilities located within a State-designated economic zone, Economic Development District designated by the Department of Commerce, Renewal Community or Empowerment Zone designated by the Department of Housing and Urban Development, or Enterprise Community designated by the Department of Agriculture; (4) improve access to, and use, of broadband service by public safety agencies; and (5) stimulate the demand for broadband, economic growth, and job creation.

[2] Joint Request for Information and Notice of Public Meetings, 47 Fed. Reg. 10717. Mar 12, 2009.

(the "Nebraska Companies")[3], a group of rural local exchange carriers, submit these comments with the distinct advantage of having the practical and operational perspective of rural broadband service providers and having years of experience meeting the challenges of serving end-users in remote rural, unserved and underserved areas.

## II. National Telecommunications and Information Administration

### A. NTIA should apportion a majority of grant funds to deploy broadband facilities to unserved and underserved areas.

The Nebraska Companies recommend that the grant funds should be apportioned to recipients spread among the various purposes of the broadband initiatives. When assigning allocations to each purpose, NTIA must consider the enormous costs of facilities deployment, especially in the geographically vast, rural areas. In order to provide access to broadband service to consumers in unserved areas and to provide improved access to broadband service to consumers in underserved areas, as directed by the Recovery Act, the NTIA should apportion significantly greater percentages of the allocated grant funds to these two purposes. Deploying the necessary broadband facilities in unserved or underserved areas will require significant capital expenditure on the part of the broadband service providers in these areas. Without designating a significant allocation of grant funding for unserved or underserved infrastructure projects to ensure progress is made in such areas, little progress will be made toward reducing currently unserved and underserved areas. The Nebraska Companies contend that because Congress has already allocated specific amounts in the Recovery Act for broadband education

[3] Arlington Telephone Company, The Blair Telephone Company, Cambridge Telephone Company, Clarks Telecommunications Co., Consolidated Telco, Inc., Consolidated Telcom, Inc., Consolidated Telephone Company, Curtis Telephone Co., Eastern Nebraska Telephone Company, Great Plains Communications, Inc., Hartington Telecommunications Co., Inc., Hershey Cooperative Telephone Co., K. & M. Telephone Company, Inc., The Nebraska Central Telephone Company, Northeast Nebraska Telephone Company, Rock County Telephone Company, Stanton Telecom Inc., and Three River Telco.

and awareness programs and other innovative programs to encourage sustainable broadband adoption, the remaining funds appropriated to NTIA, approximately $3.9 billion, should be allocated and awarded to projects proposing infrastructure construction in unserved or underserved areas.

### B. Applicants should be encouraged to address more than one of the identified purposes in the Recovery Act.

Applicants seeking grant funding should be encouraged to propose projects which meet more than one of the purposes outlined in the Recovery Act. Projects proposing to address multiple purposes will consequently meet multiple objectives of the Recovery Act. NTIA should favorably weigh grant applications proposing projects that will bring broadband service to unserved areas or improve the bandwidth, redundancy or reliability to underserved areas in order to stimulate the economic development opportunities in these areas. NTIA should also encourage and approve grant applications which propose construction of middle mile or advanced intercity transport capabilities.[4] Broadband deployment projects promising specific download and upload speeds in unserved or underserved areas are dependent on sufficient and affordable middle mile transport providers capable of offering the necessary capacity at a price that allows broadband service affordability in high-cost areas. Likewise, in order to improve economic stability in remote areas, healthcare facilities, educational institutions, governmental agencies and businesses in unserved or underserved areas need access to adequate intercity transport in order to connect to healthcare facilities, educational institutions, governmental agencies and businesses in more populous areas.

[4] Middle mile facilities are used to transport Internet traffic from an Internet Service Provider (ISP) operating in a rural telephone company's territory to an Internet Backbone Provider (IBP). The Nebraska Companies define advanced intercity transport as a network architecture consisting on multiple optical fibers that uses dense wave division multiplexing systems to derive independent channels of optical capacity between two or more locations.

### C. NTIA and RUS must also award grants to applicants constructing advanced transport facilities in rural areas in order to optimize grant-funded broadband projects.

NTIA and RUS should award grant funding to qualified applicants proposing middle mile facilities or advanced intercity transport in unserved or underserved areas. In order to promote increased adoption and sustainability of broadband service, broadband service providers need to ensure that broadband can be offered to end-users at an affordable price. If broadband providers can construct middle mile transport facilities, they will be able to provide competitively-priced alternatives to connect to the Internet. Additionally, awarding grant funds to advanced intercity transport or middle mile providers increases the economic development opportunities in unserved or underserved areas by equipping healthcare facilities, educational institutions, governmental agencies and businesses in outlying areas with a critical link to specialized information and resources in remote locations.

### D. NTIA must evaluate several factors to determine whether it is in the public interest for a for-profit entity to qualify for grant funds.

The Nebraska Companies urge NTIA to establish a three-prong test – that considers (1) the managerial, financial and operational capabilities of an applicant; (2) the sustainability of any approved project; and (3) whether the proposed project is purporting to provide broadband access to those in unserved or underserved areas – to assist NTIA in determining whether it is in the public interest for grant applications submitted by for-profit entities to receive grant funds. The very inclusion of the broadband program initiatives and corresponding appropriations in the Recovery Act is an acknowledgement of the considerable economic, educational and public safety benefits that broadband service affords American citizens. Thus, the Nebraska Companies believe NTIA should consider an applicant's experience in building and maintaining prior

broadband projects. Grant applicants should also be required to specifically demonstrate a high level of proficiency in the requisite technical and managerial knowledge of operating a broadband network. Applications exhibiting management personnel with these professional qualifications should be found to meet the first prong in the public interest inquiry.

The Nebraska Companies also support the recommendations of several panelists in the joint agency public meetings advising that the public interest test must take into account the long-term feasibility or sustainability of an applicant's proposed project. Thus, NTIA must require grant applicants to make a sufficient demonstration of their financial and operational capabilities to sustain the grant-funded project beyond initial construction. NTIA should limit awards to those applicants that provide ample business case analyses supporting projected outcomes and deliverables. Projects demonstrating long-term feasibility and sustainability should be found to meet the second prong of the public interest test because those projects meet the Recovery Act objectives of job creation and economic development.

Lastly, NTIA should examine an applicant's proposed project to ensure that the applicant is intending to serve the areas specified in the Recovery Act – namely unserved or underserved areas. Proposed projects should also be evaluated based upon the community anchor institutions they purport to serve. Applications putting forth plans to offer broadband service or advanced intercity transport capabilities to consumers, healthcare facilities, educational institutions, governmental agencies or businesses in unserved or underserved areas should be found to meet this third prong of the public interest test since the project objectives address these purposes of the Recovery Act.

### E. Project selection criteria should be consistent with project success criteria.

Project selection criteria should be consistent with project success criteria, and NTIA should coordinate its selection criteria for awarding grants with measurements of project success. Projects whose success cannot be ensured are not worthy of taxpayer funding. Therefore, the Nebraska Companies believe NTIA should set aside a substantial portion of its BTOP appropriation for projects whose primary purpose is to provide broadband access to unserved areas or to provide improved access to underserved areas. Conversely, projects that serve purposes of the Recovery Act identified in subsections 6001(b)(3), (4) and (5) should not have to compete for BTOP funds with broadband infrastructure deployment projects.[5]

NTIA should evaluate and prioritize applications and award grants independently of the process used by the RUS – with one exception: each agency must avoid funding for the same broadband infrastructure project as the other agency is funding. This can be accomplished by establishing a joint NTIA-RUS process to review all BTOP and RUS applications by state and city or other geographic identifier.

NTIA should also be technology-neutral when evaluating proposals, focusing on the costs and benefits of different technologies in any area. Different technologies will cost different amounts to install and maintain, and will yield different results and different benefits.

[5] Section 6001(b) (3) provide broadband education, awareness, training, access, equipment, and support to (A) Schools, libraries, medical and healthcare providers, community colleges, and other institutions of higher education, and other community support organizations and entities to facilitate greater use of broadband service by or through these organizations; (B) organizations and agencies that provide outreach, access, equipment, and support services to facilitate greater use of broadband service by low income, unemployed, aged, and otherwise vulnerable populations; and (C) job-creating strategic facilities located within a State-designated economic zone, Economic Development District designated by the Department of Commerce, Renewal Community or Empowerment Zone designated by the Department of Housing and Urban Development, or Enterprise Community designated by the Department of Agriculture; (4) improve access to, and use, of broadband service by public safety agencies; and (5) stimulate the demand for broadband, economic growth, and job creation.

### F. NTIA should produce a broadband map that provides sufficient information about providers, services offered and the geographic areas in which those services are available.

NTIA should focus its broadband mapping on making the most mapping information easily available in digital form to the public via the public Internet. The mapping should contain information that describes the service providers, the services they offer and the geographic areas in which the services are available.

At least initially, the geographic granularity of the map should be identical to that which the FCC has recently adopted in its Form 477 reporting requirements – i.e. the census tract. Likewise, the bit-rate granularity should also be identical to the new Form 477 speed categories. In the future, NTIA and the FCC should examine the need for reporting and mapping at a finer level of granularity in some rural census tracts in which different parts of the tract have substantially different levels of broadband availability, or are served by different providers.

### G. NTIA must require grant applicants to document up-front and ongoing project costs.

The Nebraska Companies suggest that applicants desiring *any* NTIA funding, for *any* project, should be required to document the up-front and ongoing costs of the proposed project as well as the applicant's own up-front and ongoing funding that is available for the project. NTIA should not award grants to projects for which full funding is not demonstrated when the applicant's resources and the NTIA grant are combined.

In the case of capital-intensive infrastructure deployment projects, the NTIA should not waive the statutory requirement that applicants themselves shall contribute at least 20% of project funding. It is unlikely that an organization without the ability to contribute 20% of the

project start-up costs will be able to sustain ongoing network operational and maintenance costs after federal funding evaporates.

**H. The most efficient, effective and fair way to expeditiously establish the grant application process is to adapt existing grant programs and to institute unambiguous application requirements.**

To maximize efficiency and fairness, NTIA and RUS should adapt current or previous grant programs utilized by the agencies to fit the requirements of these new broadband programs. Once the grant application process is finalized, NTIA and RUS should publish comprehensive and unambiguous grant application requirements. NTIA and RUS must assure that application information requests are clear, reasonable and objective in light of the strict timelines so that an applicant's ability to comply with all of the application requirements is not impeded. Furthermore, NTIA and RUS should allow applicants to electronically submit as much documentation and requested information as practicable for administrative convenience and accelerated review.

As part of the grant application process, NTIA and RUS should require applicants to demonstrate that the portion of the proposed project for which the applicant is seeking grant funding can be completed within two years after the receipt of such funding. To make this showing, applicants should prepare and provide detailed project plans, including a project timeline showing the applicant's ability to complete the project within the allotted time.

**I. NTIA must require applicants to submit comprehensive project details and should employ a "reasonableness standard" to determine insufficient performance levels.**

Entities submitting grant applications should be required by NTIA to include comprehensive project details along with cost estimates from vendors, engineers or other

contractors. In evaluating insufficient performance, NTIA should employ a "reasonableness standard" to determine if a grant recipient is meeting the project's objectives in an appropriate and timely manner. Undoubtedly, many grant recipients will be located in climates in which it is not feasible to engage in construction projects year round and such factors need to be considered by NTIA. However, if NTIA detects fraudulent or wasteful spending on a project, or determines an awardee is performing at an insufficient level, NTIA should first determine whether it is in the public interest to complete the project, and, if so, should publicly seek bids from other providers to complete the project.

Further, NTIA must enact rigorous reporting requirements and apply those requirements to all grant recipients to ensure that each recipient is meeting the conditions of the grant award and that the grant funds are being used for the intended purposes. Any reporting requirement should be made clear to all applicants as soon as possible and prior to the application process so that grant applicants understand and appreciate all requirements tied to the grant award. Grant recipients must be prepared and capable of meeting all accountability requirements.

**J. NTIA should adopt the following definitions of "unserved area" and "underserved area" for purposes of the Broadband Technology Opportunities Program.**

For purposes of the BTOP, NTIA should define an "unserved area" to mean any geographical area where a grant applicant proposes to provide broadband service that is not currently served by any broadband service, or is only served with dial-up (56Kbps and below) service. An "underserved area" should be defined as any geographical area in which a grant applicant proposes to provide broadband service where only broadband service with download speeds between 56Kbps and 768Kbps exists today.

With regard to the regulatory structure, NTIA should mirror the FCC's regulatory framework for providers of broadband access to the public Internet. NTIA should limit whatever nondiscrimination and interconnection requirements it places on BTOP applicants to those already articulated by the FCC. Further, any nondiscrimination and interconnection obligations imposed by NTIA on grant awardees should be applied to broadband infrastructure projects only insofar as they provide access to the public Internet.

The "public Internet" should be defined to mean "the globally unique collection of interconnected Internet protocol (IP) networks that deliver and exchange packets in the public IP address space as defined by the Internet Corporation for Assigned Names and Numbers (ICANN) under the terms of its contract with the U.S. Department of Commerce."

**K. NTIA should take the following factors into account when measuring the success of the Broadband Technology Opportunities Program.**

Measurements will vary with the nature of the project. Broadband deployment projects can be characterized in terms of the dates of service availability, size of geographic areas and/or numbers of potential user locations to be served by the project that are presently unserved or underserved, technical parameters of the services provided, adoption rates over time, deployment costs, ongoing costs, ongoing revenue sources and employment resulting directly and indirectly from the project.

## III. Rural Utilities Service

**A. The most effective way for RUS to ensure that rural residents will receive access to broadband service is to award grants to applicants sufficiently demonstrating a technical and managerial capability, a financial ability to contribute private resources as required and ample evidence of project sustainability through a business case analysis.**

By instituting a matching contribution requirement from potential grant recipients, RUS will ensure that entities interested in obtaining grant funding have a financial stake in the viability and sustainability of any project for which grant funds are requested. As should NTIA, RUS must properly vet grant applicants and proposed projects and award grants to those applicants demonstrating technical and managerial know-how in constructing and servicing broadband projects. Applicants supplying detailed business cases projecting viable business outcomes should more readily receive grant funding than applicants not providing this information. Inclusion of business cases and market analysis information demonstrate that the applicant has already invested significant private resources into studying whether a project is viable and sustainable after the grant funding has disappeared. In order for any broadband initiative project to be sustainable, broadband service must be affordable to promote wide-scale broadband adoption. Thus, RUS should also consider advanced intercity transport and middle mile projects as a priority when reviewing grant applications, particularly those for rural areas where these facilities are critical to ensuring that affordable broadband services are available to consumers.

### B. After performing a rurality analysis, RUS should utilize NTIA's definitions of unserved and underserved to meet the purposes of the Recovery Act.

In order to reconcile the RUS and NTIA broadband program initiatives, the Nebraska Companies recommend that RUS first examine the rurality worksheet submitted by an applicant as part of the RUS grant program application materials to determine if the project receives an acceptable rurality score on the existing RUS rurality scale for the proposed project area. If the proposed project's area is deemed sufficiently rural, RUS should then evaluate whether that area

is without sufficient access needed for economic development. In doing so, RUS should adopt the NTIA definitions of unserved and underserved areas to best meet the purposes of the Recovery Act broadband initiatives and to assure fairness in review of projects between both programs.

### C. RUS and NTIA must enact interagency coordination efforts to avoid grant applicants receiving duplicate resources from the agencies.

Applicants should not be discouraged from applying for grant funds from both agencies for either the same or unrelated projects; however, a high level of interagency coordination and oversight is necessary to safeguard taxpayer-funded grant money. As stated in the Nebraska Companies' above comments on the NTIA program, interagency coordination is essential to fulfilling the Act's directives to ensuring that NTIA and RUS avoid funding the same broadband infrastructure project.

### D. RUS must consider various factors in determining what speeds are needed to facilitate economic development in rural areas.

In evaluating whether a particular level of broadband access is necessary to encourage and facilitate economic development in rural areas, RUS must recognize that there is no single solution to the challenges of broadband utilization in rural areas. Internet speeds needed to facilitate economic development are dependent on the types of businesses present in various rural locations and the types of applications that are specific to and necessary for these industries to fully engage and be competitive in the business they conduct. In addition to the broadband needs of the industries already present in these rural areas, the needs of the industries that rural areas would like to attract should also be considered. Some interactive applications that local governments and school districts utilize will not require the same broadband speeds as are

necessary for business video-conferencing or for rural healthcare providers seeking diagnostic and imaging consultations with specialists at urban medical centers – both of which may require up to 60Mbps. Regardless of the particular speed necessary to facilitate economic activity, economic development will not occur without high-capacity intercity transport facilities. For these reasons, the Nebraska Companies strongly encourage the RUS to award grant funding to projects proposing construction of advanced intercity transport capabilities in rural areas.

### E. RUS must assign the highest priority to grant applications which propose to serve the highest proportion of rural residents that lack access to broadband service.

In considering and ranking the identified priorities, the Nebraska Companies contend that the priority order for proposed projects in the RUS program, from most important to least important, should be as follows: (1) projects serving the highest proportion of rural residents that lack access to broadband service, (2) projects of current and former RUS borrowers, (3) projects that are fully funded (with applicant-demonstrated matching funding) and ready to start once funding is received, and (4) and projects giving end-users a choice of Internet service providers.

In order to meet one of the major and underlying purposes of the broadband program initiatives contained in the Recovery Act, projects proposing to serve the highest proportion of rural residents that are lacking access to broadband service should be designated as the highest priority projects. The economic, educational and public interest benefits that access to broadband service provides a rural area are undisputed. Projects which bring those benefits to a greater number of rural residents should be given precedence by RUS in order to advance the economic development, educational opportunities, healthcare facilities and other community anchor institutions. RUS must also take into account that awarding grants to fund last mile, broadband projects in rural areas is only a portion of the overall solution. In order to make

broadband service in rural areas sustainable, broadband must be reliable and offered to end-users at an affordable price. To realize the benefits of last mile broadband construction, a broadband provider must have sufficient intercity transport options. RUS must consider funding projects which propose construction of middle mile transport facilities in rural areas so that rural broadband service providers have adequate and competitively-priced transport alternatives. For these reasons, RUS should place the highest value on projects proposing to serve the highest proportion of rural residents that lack access to broadband and accordingly allocate the largest portion of grant funds to finance these projects.

Projects proposed by current and former RUS borrowers should be the next priority for RUS grant funding. Current and former RUS borrowers have already made the requisite showing that they serve rural areas and that they are financially viable. Providing funds to current and former RUS borrowers assures that the grant funding will be spent constructing or supplementing broadband in rural areas without sufficient access to broadband service. RUS should also prioritize projects whose applicants demonstrate technical and managerial competency in broadband deployment. Current and former RUS borrowers have undoubtedly demonstrated competency to the agency in their prior applications. Therefore, projects lead by applicants with personnel demonstrating prior experience with the construction and deployment of broadband facilities in rural areas should be accorded priority status for grant funding.

Following those priorities, RUS should then give priority to projects demonstrating that they are fully funded (including applicant matching funding) and ready to commence once grant funding is received. Awarding grant funds to such projects will foster the economic stimulus purposes of the Recovery Act by spurring job creation and economic development in the United States in a time-sensitive manner.

Lastly, projects which give end-users a choice of Internet service providers should be the lowest priority projects for receipt of grant funds. Before designated subgroups of end-users are given a choice among multiple Internet service providers, grant funds should first be spent to bring broadband service to unserved areas or to improve broadband access in underserved areas. Particularly in light of the present economic climate, it is imperative to utilize the grant funds to deploy broadband to end-users without any access or sufficient access so that those end-users may realize the economic and educational opportunities available to broadband customers, whether residential or business, in rural or remote areas. In considering the economics of serving rural, unserved and underserved areas, where even a single broadband provider may struggle to survive, the use of grant funds to support multiple Internet service providers in such high-cost areas diminishes the long-term sustainability prospects for all broadband providers in the area.

### F. RUS should assess multiple factors in evaluating the success of its Recovery Act broadband program.

To quantify the success of the RUS broadband grant and loan programs, RUS must be prepared to evaluate multiple factors. Since providing access to broadband service in rural, unserved and underserved areas are major purposes of the broadband program initiatives, it would be expected that RUS would ask grant recipients to track how many new business and residential end-users have gained access to broadband service through projects funded with grant money. However, this cannot be the sole metric in judging the success of any one project. RUS, more than any other agency, should realize the challenges of broadband deployment in rural areas and the difficulty in reaching end-users in distant and isolated locations. The complexity factor, however, does not make broadband deployment to these areas any less important simply

because relatively large numbers of customers could not be reached within the scope of one project.

RUS must also consider the importance of adequate and affordable middle mile transport options. If a rural broadband provider receives grant funding for a broadband deployment project, it will be dependent on a middle mile transport option capable of supplying enough bandwidth capacity in order to optimize the broadband facilities. If the rural broadband provider is unable to procure transport at an affordable price due to either inadequate transport facilities or a monopolistic hold on the transport market, the price at which the rural broadband provider must sell its broadband service may make the service unattractive and unaffordable to end-users.

For similar reasons, broadband facilities deployed to anchor institutions in a community, such as healthcare providers, educational institutions, governmental agencies and independent businesses can potentially benefit the economic well-being of any rural community. However, in order for the anchor institutions to adequately connect to other establishments throughout the state or country, the community and broadband provider must be able to offer enough bandwidth capacity to serve the institution's needs and do so affordably. Providing broadband service and access to rural areas is the best avenue to job preservation and creation in rural areas. With sufficient access to broadband service, rural businesses can market and sell their products to a global consumer base.

## IV. Conclusion

The Nebraska Companies urge the NTIA and the RUS to adopt the recommendations set forth in these comments. The Nebraska Companies believe that following such recommendations will fulfill the goals of the Recovery Act by increasing broadband availability and subscribership in

rural, unserved and underserved areas, preserving and creating jobs, and also furthering economic development in such areas.

Dated: April 13, 2009.

Respectfully Submitted,

THE NEBRASKA RURAL INDEPENDENT COMPANIES

Arlington Telephone Company,
The Blair Telephone Company,
Cambridge Telephone Company,
Clarks Telecommunications Co.,
Consolidated Telco, Inc.,
Consolidated Telcom, Inc.,
Consolidated Telephone Company,
Curtis Telephone Co.,
Eastern Nebraska Telephone Company,
Great Plains Communications, Inc.,
Hartington Telecommunications Co., Inc.,
Hershey Cooperative Telephone Co.,
K. & M Telephone Company, Inc.,
The Nebraska Central Telephone Company,
Northeast Nebraska Telephone Company,
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